U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-P-H-H-S-, INC.

DATE: MAR. 29, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a home health care business, seeks to permanently employ the Beneficiary in the United States as a healthcare financial manager. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition. The Director determined that the Petitioner had not established that the Beneficiary possessed the minimum educational requirements of the job offer.

The matter is now before us on appeal. The Petitioner asserts that it has established that the Beneficiary satisfies the requirements for classification as an advanced degree professional, and meets all of the requirements listed on the labor certification as of the priority date. Upon *de novo* review, we will dismiss the appeal.

I. LEGAL FRAMEWORK

Employment-based immigration generally follows a three-step process. First, an employer must obtain an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. Section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer may file an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

As required by statute, the I-140 petition filed in this matter is accompanied by an approved labor certification certified by the DOL. The priority date of the petition based on the date that the labor certification was filed in this matter is February 26, 2016.

For this advanced degree professional position, the labor certification must provide that the job requires an advanced degree or its equivalent. *See* 8 C.F.R. § 204.5(k)(4)(i). In pertinent part, Department of Homeland Security regulations define the term "advanced degree" as: "[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree *followed by at least five years of progressive experience* in the specialty shall be considered the equivalent of a master's degree." 8 C.F.R. § 204.5(k)(2) (emphasis added). To be eligible for this EB-2 classification solely on the basis of a foreign degree equivalent of a U.S. bachelor's degree, a beneficiary must also possess five years of qualifying post-baccalaureate experience. 8 C.F.R. § 204.5(k)(3).

The Petitioner must establish that the Beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). USCIS must read the terms of the labor certification as drafted. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 (Comm. 1986). When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983).

II. THE JOB OFFER

The required education, training, experience and skills for the offered position are set forth at Part H of the labor certification. In the instant case, the labor certification states that the position has the following minimum requirements:

H.4.	Education: minimum level required: Master's degree.
. . .	
H.4-B.	Major field of study: Business Administration.
. . .	
H.6.	Is experience in the job offered required for the job? Yes.
H.6-A.	If Yes, number of months experience required. 60.
H.7.	Is there an alternate field of study that is acceptable? No.
. . .	
H.8.	Is there an alternate combination of education and experience that is acceptable? No.
. . .	
H.9.	Is a foreign educational equivalent acceptable? Yes.
H.10.	Is experience in an alternate occupation acceptable? No.
. . .	
H.14.	Specific skills or other requirements: 5 years experience in financial

> analysis, budgeting and strategic planning, and/or auditing and must know about issues in healthcare finances.

On the labor certification, in Part J.11, J.12, and J.13, the Beneficiary listed her education as a master's degree in business administration from [redacted] Philippines, completed in 1984. The Petitioner submitted copies of the Beneficiary's diploma and academic transcript from the [redacted] The Petitioner also submitted a two-page unofficial "Display Transcript" from [redacted] indicating that the Beneficiary was seeking an associate's degree there in 2009 and 2010.[1]

The Petitioner submitted a credentials evaluation performed by [redacted] for [redacted] confirmed that the Beneficiary completed four years of college-level studies and was awarded a bachelor's degree in 1984. Based on "Academic Qualifications Alone" he finds that she has, "the equivalent of a Bachelor of Business Administration." The evaluator also examined the Beneficiary's "more than twenty years of employment experience . . . in the field of Business Administration." He considered her employment from November 1990 to May 1996 as an accountant; her experience from February 1997 to May 1998 as a data manager; her experience from May 1999 to October 2003 as an office manager and project accountant; her experience from January 2004 to September 2005 as a finance officer; and her experience from February 2010 to July 2015 as an auditor. The evaluator concluded that the combination of this experience and her bachelor's degree formed "the equivalent of a Master's degree in Business Administration." He does not conclude that she has a master's degree based on education alone.

The Petitioner also submitted an evaluation performed by [redacted] for [redacted] examined the Beneficiary's four years of post-secondary education and bachelor of science degree from the [redacted] and concluded that it was the equivalent of a bachelor of business administration from a regionally-accredited institution of higher education in the United States. This evaluation does not discuss the Beneficiary's work experience. Similarly, this evaluation does not conclude that the Beneficiary's education is equivalent to the required master's degree.

The evidence submitted establishes that the Beneficiary has a completed bachelor of business administration degree received in 1984. However, neither evaluation that the Petitioner submitted concluded that the Beneficiary had a master's degree based on any educational program of study to meet the requirements of the certified ETA Form 9089, which requires the minimum education of a master's degree, and does not state or allow for any alternate combination of a bachelor's degree and five years of experience.

Part K of the labor certification states that the Beneficiary possesses experience as an auditor from 2010 until 2015, as an administrative/finance coordinator from 2005 until 2007, and as a finance officer from 2004 until 2005. The record contains corroborating experience letters from the Beneficiary's claimed

[1] The printout warns, "This is NOT an official transcript."

employers establishing that the Beneficiary possessed the experience required by the labor certification.

III. ANALYSIS

The Director determined that the Beneficiary did not possess the minimum education of a master's degree required by the labor certification and denied the petition. On appeal, the Petitioner asserts that the Beneficiary possesses an advanced degree, in that USCIS regulations describe an advanced degree as including a "United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty." 8 C.F.R. § 204.5(k)(2).

However, while the Petitioner is correct that USCIS regulations allow beneficiaries to qualify for second preference immigrant classification with a bachelor's degree followed by at least five years of progressive experience in the specialty, the Petitioner must also establish that the Beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position evidenced by the certified labor certification by the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. at 159; *see also Matter of Katigbak*, 14 I&N Dec. at 49. Here, the Petitioner has not established that the Beneficiary had the education required by the terms of the labor certification, a master's degree.

In evaluating the job offer portion of the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Even though the labor certification may be prepared with the beneficiary in mind, USCIS has an independent role in determining whether the beneficiary meets the labor certification requirements. *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *7 (D. Or. Nov. 30, 2006).

In the instant case, the Petitioner stated at Line H.4 of the labor certification that the position requires a master's degree in business administration. As noted above, the Petitioner stated in J.11 and J.13 that the Beneficiary had the required master's degree, which the form states she completed in 1984. The Petitioner states on appeal that it will accept the combination of the Beneficiary's bachelor's degree along with her work experience as the equivalent to a master's degree, however, this statement directly contradicts the Petitioner's statement at Line H.8 of the labor certification that a combination of education and experience would not be acceptable as an alternative to the required master's degree and five years of required experience. This statement also contradicts her claimed education in J.11, and J.13. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988). Further, the Petitioner did not qualify H.14, or state that the primary requirements could be met through any alternate combination of education and experience.

After reviewing all of the evidence in the record, it is concluded that the Petitioner did not establish that the Beneficiary has a U.S. master's degree or a foreign equivalent degree as required by the

terms of the labor certification. Thus, the Petitioner did not establish that the Beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date.

IV. CONCLUSION

The Petitioner did not establish that the Beneficiary possessed the minimum requirements of the offered position set forth on the labor certification as of the priority date.[2] In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of T-P-H-H-S-, Inc.*, ID# 344899 (AAO Mar. 29, 2017)

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[2] We also note that the record lacks sufficient documentation to determine whether the Petitioner can establish its continuing ability to pay the proffered wage as of the priority date. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, USCIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). Where a petitioner has filed multiple petitions, we will also consider the petitioner's ability to pay the combined wages of each beneficiary. *See Patel v. Johnson*, 2 F.Supp.3d 108 (D. Mass. 2014); *see also Great Wall*, 144-145.

Here, the Petitioner has filed employment-based immigrant petitions on behalf of other beneficiaries in addition to the current Beneficiary. As two of these other petitions were approved, but the sponsored workers had not adjusted to permanent resident status as of the current priority date, the Petitioner must demonstrate the ability to pay the proffered wage to each of these beneficiaries from the priority date in this matter and continuing until each respective beneficiary obtains lawful permanent residence.

The Petitioner has submitted its tax records for only 2015, which occurred before the February 26, 2016, priority date. While the filing date for the Petitioner's 2016 federal income tax return has not yet tolled, the Petitioner has not provided copies of IRS Forms W-2 or any other evidence of wages paid to the current Beneficiary or the beneficiaries of its other petitions, and the record contains no evidence of the wages paid to the other beneficiaries. Without more complete information, we cannot fully assess the totality of the Petitioner's financial standing to determine whether it can pay the proffered wages to the Beneficiary and to the other workers sponsored by the Petitioner. This issue must be addressed in any further proceedings.